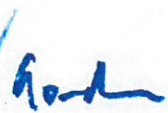**The Hon Christian Porter MP**
Attorney-General
Minister for Industrial Relations
Leader of the House

MS19-001976

20 October 2019

Mr Gordon Ramsay MLA
Attorney-General
Member for Ginninderra
ACT Legislative Assembly
GPO Box 1020
CANBERRA ACT 2601

Dear ~~Attorney-General~~ *Gordon*

Thank you for your letter of 14 October 2019 regarding the *Drugs of Dependence (Personal Cannabis Use) Amendment Act 2019* (the Act), and for providing a copy of the Act as enacted.

I note your view that the Act would engage sections 313.1 and 313.2 of the Commonwealth Criminal Code (the Code) and provide defences to the relevant Commonwealth offences.

I am writing to advise that the Commonwealth's view is that the approach taken in the Act has not engaged the defence available in section 313.1 of the Code. Consistent with the advice provided by my department to the ACT Government on 2 May 2019 and 23 September 2019, the Commonwealth's view is that section 313.1 of the Code requires a positive basis in the law to engage that defence.

On this basis, the Commonwealth's view is that the relevant offences, in particular, section 308.1 of the Code, continue to operate in the Australian Capital Territory (ACT), without the benefit of the exemption created by section 313.1 of the Code.

In light of this clear view, which I will publicly communicate, it is also my view that section 313.2 of the Code would not reasonably be available to a defendant in the ACT who points solely to the passage of the Act as the basis of their belief that the conduct is justified or excused.

I would expect that ACT Policing will continue to enforce ACT and Commonwealth drug laws in accordance with their processes and procedures for investigating suspected breaches of criminal laws.

Given their portfolio interests in this issue, I have copied this correspondence to the Shadow ACT Attorney-General, the Commonwealth Ministers for Home Affairs and Health, and the Assistant Minister for Regional Development and Territories.

Thank you for raising this matter with me.

Yours sincerely

The Hon Christian Porter MP
Attorney-General
Minister for Industrial Relations
Leader of the House